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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/293,297	04/16/1999	SHAWN P. MCALLISTER	1400.9801200	4690
25697	7590	03/15/2004	EXAMINER	
ROSS D. SNYDER & ASSOCIATES, INC. 115 WILD BASIN RD. SUITE 107 AUSTIN, TX 78746			DUONG, DUC T	
			ART UNIT	PAPER NUMBER
			2663	

DATE MAILED: 03/15/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

TM

# Office Action Summary

Application No.

09/293,297

Applicant(s)

MCALLISTER ET AL.

Examiner

Duc T. Duong

Art Unit

2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-22 and 29-34 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 23 is/are rejected.
- 7) ☒ Claim(s) 3-14 and 24-28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1, 2, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyagi et al (U.S. Patent 5,894,471) in view of Trebes, Jr. (U.S. Patent 6,317,438 B1).

Regarding to claims 1 and 23, Miyagi discloses a link characteristic processor 100 (Fig. 2) comprising a processing module 110 and memory 102 operably coupled to the processing module (col. 5 lines 20-33). The memory includes operating instruction that cause the processing module to determine connection type characteristics (SVC or PVC) for a link (col. 5 lines 37-42), wherein the connection type characteristics comprise partitioning of available bandwidth of the links (Fig 6A col. 7 lines 18-31); advertising the connection type characteristics to at least one node (network equipment) in the network (col. 12 lines 28-36); and utilizing, by the at least one node, the connection type characteristics for selecting a routing path within the network for a connection (col. 13 lines 23-38).

Miyagi fails to teach for the link is between switched virtual connections and soft permanent virtual connections.

Art Unit: 2663

However, Trebes discloses a telecommunications network having VPCs or semi-permanent SPVC with reserved (partitioning) capacity (bandwidth), see col. 24 lines 10-15.

Thus, it would have been obvious to one of ordinary skilled in the art, at the time of the invention, to include the partitioning the bandwidth of SPVC as taught by Trebes in Miyagi's system to organized a logical overlay network using virtual paths.

Regarding to claim 2, Miyagi discloses a routing path (VPC) within the network for a connection based on the connection type characteristics (Fig. 6B col. 7 lines 42-46).

***Allowable Subject Matter***

3. Claims 3-14 and 24-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Claims 15-22 and 29-34 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach or make obvious the steps of or means for "comparing the plurality of parameters with a table that stores network parameters to produce a first routing path to the receiving party, wherein the network parameters include links within the network and corresponding connection type characteristic capabilities for the links, wherein the connection type characteristics capabilities comprise partitioning of available bandwidth of the links between switched virtual connections and soft permanent virtual connections", when the comparing is considered

Art Unit: 2663

within the specific structure of the method recited in claim 15 or the device recited in claim 29. The prior art of record fails to teach or make obvious the steps of or means for "compiling connection type characteristic for a plurality of links within the network to produce a characteristic data set, wherein selecting the routing path further comprises selecting the routing path using the characteristic data set, wherein selecting the routing path further comprises comparing characteristics of a connection request with the characteristic data set, wherein the routing path is provided in response to the connection request, wherein compiling further comprises compiling the connection type characteristics for the plurality of links with additional network characteristics to produce the characteristic data set", when the compiling is considered within the specific structure of the method recited in claim 34.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 703-605-5146. The examiner can normally be reached on M-Th (8:30 AM-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 703-308-5340. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9600.

DD

March 9, 2004



STEVEN H.D NGUYEN  
PRIMARY EXAMINER